

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Wayne Analyst: Kristina E. North Bill Number: AB 1822
Related Bills: None Telephone: 845-6978 Amended Date: March 13, 2000
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Administrative Procedures Act/State Agency Regulations

SUMMARY OF BILL

Under the Administrative Procedures Act (the "Act") portion of the Government Code, this bill makes various changes to the current rulemaking process, including making the rulemaking file available to the public for inspection and copying during regular business hours beginning on or before the published notice date.

This analysis addresses only those provisions applicable to rulemaking procedures that impact the department's programs and operations.

SUMMARY OF AMENDMENT

The March 13, 2000, amendment:

- ☐ restates authorization for an agency to use electronic communication to publish or distribute a required rulemaking document, but specifies that electronic communication shall not be the exclusive means of communication.
- ☐ restates authority for an agency to deliver a required or authorized notice to an individual via electronic communication.
- ☐ specifies that an agency may receive a comment or petition via electronic communication.
- ☐ requires an agency maintaining an Internet website or similar forum of electronic communication to publish the required public rulemaking notice, the initial and final statements of reason, the notice of a decision not to proceed on a regulatory action, and the text of a proposed regulation or instructions about how to obtain a copy of the text.
- ☐ requires an agency that decides not to proceed with a proposed rulemaking action to inform OAL by notice to be published in the California Regulatory Notice Register.

This is the department's first analysis of this bill.

EFFECTIVE DATE

This bill would be effective and apply beginning on or after January 1, 2001.

SPECIFIC FINDINGS

Board Position:	Department Director	Date
_____ S	Gerald H. Goldberg	4/21/00
_____ SA		
_____ N		
_____ NA		
_____ O		
_____ OUA		
_____ NP		
_____ NAR		
_____ X PENDING		

Current state law allows a state agency to adopt, amend or repeal regulations (every rule, regulation, order or standard of general application) and provides procedures by which the agency may adopt, amend, or repeal the regulation, including Office of Administrative Law (OAL) review.

Current state law requires a state agency to provide an initial statement of reasons for proposing the adoption, amendment or repeal of each regulation. The statement of reasons may include facts, evidence, documents, testimony, or other evidence upon which the state agency relies to support the declaration that the regulatory action will not have a significant adverse economic impact on business. Further, all state agencies are required to assess the impact of the proposed action on businesses in the state.

Current state law requires OAL to review a state agency's proposed rulemaking action using the following defined legal standards: necessity, authority, clarity, consistency, reference, and nonduplication.

Current state tax law requires that, in areas where federal law and state law are the same, federal income tax regulations shall be applied to the extent they do not conflict with state law or state regulations.

This bill would:

- ☐ require the agency to make available the rulemaking file to the public for inspection and copying during regular business hours beginning no later than the date that the notice of a proposed action is published and during all subsequent periods the agency has the file in its possession.
- ☐ require an agency that adds any study or report to the rulemaking rule after publication and has relied on that document in proposing the regulation, to make that document available under specified guidelines.
- ☐ require that an agency assess the potential for adverse economic impact on California businesses and individuals of the proposed repeal of a regulation.
- ☐ repeal the previous definitions used in the laws regarding regulations, restructure some of the definitions, and redefine "plain English."
- ☐ increase from 120 to 180 days the amount of time an emergency regulatory action may remain in effect without complying with specified procedures.
- ☐ authorize the use of electronic communication in the delivery and publication of notices and rulemaking documents.
- ☐ require an agency maintaining an Internet website or similar forum of electronic communication to publish the required public rulemaking notice, the initial and final statements of reason, the notice of a decision not to proceed on a regulatory action, and the text of proposed regulation or instructions how to obtain a copy of the text.
- ☐ authorize agencies to consult with interested persons before initiating regulatory action.

- ☐ specify that preliminary determinations made by a state agency may be made on the basis of the agency's belief.
- ☐ require that plain English be used with regard to all regulations, not only those regulations pertaining to small businesses.
- ☐ allow an agency to impose reasonable limitations on oral testimony at public hearings on proposed regulations.
- ☐ allow a state agency to aggregately respond to or summarily dismiss, as a group, repetitive or irrelevant comments in its statement of reasons for adopting, amending, or repealing a regulation.
- ☐ except from the rulemaking requirements a regulation establishing criteria or guidelines for use of state agency staff performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial arrangement or in the defense, prosecution, or settlement of a case.
- ☐ except from the rulemaking requirements a regulation that is the only legally tenable interpretation of a provision of law.
- ☐ revise the standards for demonstrating necessity of a proposed regulation by a state agency.
- ☐ specify what evidence a court may consider in connection with an action for a judicial declaration as to the validity of a regulation, order or repeal.

This bill also makes minor technical changes to the laws regarding regulations.

Policy Consideration

This bill may make it more difficult to repeal a regulation by requiring the department to assess any adverse economic impact on individuals and corporations before repealing the regulation.

Implementation Consideration

This bill would impact the department by requiring that rulemaking files be available for public inspection and copying during working hours beginning on or before the published notice of proposed action date and for the entire time the department has possession of the file. However, with only one rulemaking file for a proposed action available, it is unclear at what location the department must make the file available (i.e., the original rulemaking file is created and maintained in the headquarters office; however, a member of the public makes a request to inspect and copy the rulemaking file at a district office in another city). Clarification is needed on this issue.

The remainder of this bill's provisions are essentially consistent with the department's current procedures and could be implemented by this department.

FISCAL IMPACT

Departmental Costs

With the implementation issues resolved, this bill should not significantly impact the department's costs.

Tax Revenue Estimate

This bill would not impact the department's collection of state income tax revenue.

BOARD POSITION

Pending.